NAIK DIEW KONG v. LING SING HANG & CO SDN BHD & ORS

HIGH COURT MALAYA, IPOH
NOORIN BADARUDDIN JC
[ORIGINATING SUMMONS NO: 24NCVC-348-08-2015]
28 JANUARY 2016

CIVIL PROCEDURE: *Striking out – Rules of Court, O. 18 r. 19 – Cause of action – Co-proprietorship of land – Application to terminate co-proprietorship by way of partition – Whether originating summons disclosed reasonable cause of action*

LAND LAW: *Subdivision – Co-ownership – Application to terminate co-proprietorship – Partition – Whether National Land Code allows court to consider or approve application to partition land – Whether co-proprietor holding majority share in land may apply for approval to partition land – National Land Code, ss. 140, 141, 142 & 145(1)(a)*

The plaintiff and the defendants were co-proprietors of a piece of land. The plaintiff held 1/2 of the undivided shares while the first, second and third defendants each held 1/6. The plaintiff gave the defendants a five-day notice to sign some documents and plans for the partition of the said land but the defendants refused to cooperate. This prompted the plaintiff to file an originating summons ('the OS') to terminate, by way of partition, the co-proprietorship. The first defendant filed an application *vide* encl. 3 to strike out the plaintiff's OS, pursuant to O. 18 r. 19(1)(a) of the Rules of Court 2012 ('ROC') on the ground that the OS disclosed no reasonable cause of action. The first defendant submitted that (i) while they did not dispute the court's general power to facilitate termination of co-proprietorship of land under the National Land Code ('NLC'), there was nothing in s. 145(1)(a) of the NLC that allowed the court to consider or approve an application to partition the said land; and (ii) it goes against the spirit and purpose of the amended s. 141A of the NLC if any co-proprietor could simply issue a five-day notice to the other co-proprietors and apply to the court to partition land without complying with the provisions of the NLC. The plaintiff, on the other hand, submitted that s. 141A of the NLC provides that notwithstanding the provisions of ss. 140 and 141, a co-proprietor holding the majority share in the land may apply for approval to partition the said land. According to the plaintiff, the effect of s. 141A would seem to be where the necessary consent or agreement, referred to in ss. 140 and 141 of the NLC is not forthcoming, then the majority shareholders can apply to the Land Administrator for partition and the application would then seem to be dealt with as if consent of all the co-proprietors has been obtained.

Held (allowing encl. 3):

(1) The OS filed by the plaintiff did not disclose a reasonable cause of action. Even though the provisions of s. 145 of the NLC gives the court the power to facilitate the making of such order desired by any co-proprietors to partition land, notwithstanding whether they are holding the majority shares or otherwise, the court could not allow the plaintiff to rely on the said power of the court to circumvent the conditions and the power given to the Land Administrator in the preceding sections under the same chapter of the NLC. The plaintiff had to satisfy the court that he initially intended to apply to the Land Administrator to partition the land under s. 142 of the NLC but was forced with the situation where he could not get the cooperation of the defendants. (para 31)

(2) Based on the OS filed by the plaintiff, it would seem that the only precondition for a proprietor to apply to the court to partition a land was simply to engage a lawyer and issue a five-day notice to the co-proprietors to sign some undisclosed documents. This will create a dangerous precedent. The court will be bogged down with applications to partition land which were meant and best suited for the Land Administrator. The court will not usurp the powers and responsibilities which the Legislature specifically entrusted to an agency. (para 23)

(3) The plaintiff could not satisfy the provision of sub-s. (a) of s. 145(1) *ie*, that any of the co-proprietors will neither join in, nor consent to the making of, an application for partition under Chapter 2 of the NLC. It would be against the spirit and purpose of the amended s. 141A of the NLC if any co-proprietor could simply issue a five-day notice to the other co-proprietors and affirmed an affidavit barely ten days from the said notice with no disclosure of the plan for the partition to the other co-proprietors and made his way to the court, making an application under s. 145 of the NLC. There must be a procedure that a co-proprietor has to adhere to for application to partition in land under Chapter 2 of the NLC and that procedure is laid down in s. 142 of the NLC. (para 21)

(4) After the amendment to s. 141A of the NLC, the plaintiff need not own a majority share to apply to the Land Administrator for the said land to be partitioned. The question of whether a co-proprietor is a majority or minority holder does not arise anymore with the amendment to s. 141A of the NLC. For the plaintiff to come straight to the court and request the court to invoke its power under s. 145(1)(a) of the NLC without even indicating their intention to apply to the Land Administrator to have the said land to be partitioned would make the preceding section under Chapter 2 redundant. Section 142 of the NLC, which lays down the

condition for approval of the partition of any land, would be nugatory. The requirement to dispense with the consent of other co-proprietors under the new s. 141A read together with sub-ss. (3) and (4) of s. 42 of the NLC is still preserved in the NLC. (para 28)

Case(s) referred to:

Australian Alliance Assurance Co Ltd v. Attorney General (Queensland) [1916] QSR 135 ***(refd)***

Ku Yan Ku Abdullah v. Ku Idris Ku Ahmad & Ors [1991] 3 CLJ 2872; [1991] 3 CLJ (Rep) 73 HC ***(refd)***

S Subramaniam & Ors v. Inderjit Kaur Karnail Singh & Anor [1997] 3 CLJ 746 HC ***(refd)***

Sangka Chuka & Ors v. Pentadbir Tanah Daerah Mersing Johor & Ors [2014] 1 LNS 734 HC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, Schedule para. 3

National Land Code, ss. 140, 141, 141A, 142(1)(e), (3), (4), 143, 143A, 144, 145(1)(a), (b), 418

Rules of Court 2012, O. 18 r. 19(1)(a)

For the plaintiff - Nga Hock Cheh; M/s Nga Hock Cheh & Co
For the 1st defendant - Edmund Lim; M/s Hong Chew King & Co

Reported by Najib Tamby

JUDGMENT

Noorin Badaruddin JC:

[1] The plaintiff in this originating summons ('OS') dated 4 August 2015 seeks judicial assistance to terminate by way of partition the co-proprietorship of a piece of land known as Lot 1087 Pekan Ayer Tawar held under the Grant 104423 ('the said land').

[2] On 28 August 2015, the first defendant by way of encl. 3 filed an application to strike out the plaintiff's OS pursuant to O. 18 r. 19(1)(a) of the Rules of Court 2012 ('ROC') on the ground that the OS disclosed no reasonable cause of action.

[3] On 30 November 2015, this court allowed the application of encl. 3 filed by the defendants and the reasons now follow.

Facts

[4] The plaintiff's and the defendants' undivided shares of the said land are as follows:

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Plaintiff	:	1/2 of undivided shares
First defendant	:	1/6 undivided shares
Second defendant:		1/6 undivided shares
Third defendant	:	1/6 undivided shares

B

[5] According to the supporting affidavit filed by the plaintiff, a notice ('the said notice') was given to the defendants by way of a letter dated 13 July 2015 giving them ie, the defendants five days to cooperate in signing the relevant documents and plans for the purpose of the partition of the said land.

C **[6]** The plaintiff then affirmed an affidavit alleging that the defendants had refused to cooperate in any way to subdivide and partition the said land.

[7] The plaintiff claimed *inter alia* the following:

(a) that the co-ownership of the said land be terminated immediately;

D (b) that the said land be partitioned for the issuance of separate titles according to the plan exhibited in exh. N3;

(c) that the parties be given rights as per the plan in exh. N3;

(d) that all costs and expenses relating to the partitioning and issuance of
E separate titles be borne jointly by the parties;

(e) that if the defendants failed to pay their share of costs and expenses, plaintiff could advance the same and the plaintiff's solicitors be entitled to retain the separate title of the first defendant who refused to pay and the plaintiff be entitled to take all such action to recover the costs and
F expenses;

(f) that the defendants sign all papers and documents necessary for the partitioning and issuance of separate titles, failing which the Court's Registrar be entitled to do so on behalf of the defendants; and

G (g) that the costs of this action and plaintiff's solicitors' fees be borne by the defendants, failing which the plaintiff is entitled to retain the separate titles to recover costs of this action and plaintiff's solicitors' fees.

[8] The plaintiff's supporting affidavit was affirmed on 23 July 2015 ie, barely ten days from the date of the said notice. The plan in exh. N3 was
H never disclosed or annexed to the said notice.

Contentions Of The First Defendant And The Plaintiff

[9] The first defendant submitted that while they do not dispute the court's general power to 'facilitate' the termination of co-proprietorship of
I land under the National Land Code ('NLC'), there is nothing in s. 145(1)(a) of the NLC that allows the court to consider or approve an application to partition the said land as prayed by the plaintiff in the OS.

[10] According to the first defendant, an application to partition land comes under the sole jurisdiction of the State Director or the Land Administrator pursuant to s. 140 of the NLC. The defendant relied on the judgment given by the learned Mohd Hishamudin J (as His Lordship then was) in the case of *S Subramaniam & Ors v. Inderjit Kaur Karnail Singh & Anor* [1997] 3 CLJ 746; [1997] 3 MLJ 366 where it was held that the court had no jurisdiction to make the order for the land to be partitioned. His Lordship held:

> (1) The court had no jurisdiction to make the order sought. Since it was the holder of the majority share who wanted the land to be partitioned, they had to comply with the provisions of the NLC dealing specifically with such a situation, ie, s. 141A read together with s. 142 of the NLC
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> (2) Section 145(1) (a) of the NLC only refers to a situation where it is the holder of the minority share who intends to apply to the land administrator pursuant to s. 142 but one of the co-proprietors has refused to consent to it. The holder of the minority share can then apply to the court pursuant to s. 145(1)(a)
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> (3) The holder of the majority share can only apply under s. 141A read with s. 142 where he is not required to obtain consent of the other co-proprietor(s) and this exemption is made clear by s. 142(1)(e). If the application is rejected, he can appeal to the High Court against the rejection.

[11] Counsel for the first defendant highlighted to this court that after the decision of *S Subramaniam & Ors v. Inderjit Kaur Karnail Singh & Anor* (*supra*), s. 141A of the NLC was amended (Act A1333 w.e.f. 1 December 2001) to enable "any co-proprietor" to apply to the Land Administrator to partition land whereby the consent of other co-proprietors "shall be dispensed with" (see s. 142(1)(e) of the NLC). Previously, s. 141A of the NLC allowed only "a co-proprietor(s) holding the majority share" to apply to the Land Administrator to partition land. Learned counsel for the first defendant stated that the said amendment had effectively widen the powers and jurisdiction of the Land Administrator under s. 142 of the NLC.

[12] Therefore, according to the learned first defendant's counsel, it goes against the spirit and purpose of the amended s. 141A of the NLC if any co-proprietor could simply issue a "five day notice" to the other co-proprietors and thereafter apply to the court to partition land without complying with the provisions of the NLC dealing specifically with such a situation as stated by Hishamudin J in *S Subramaniam*.

[13] The plaintiff on the other hand submitted that s. 141A of the NLC provides that notwithstanding the provisions of ss. 140 and 141, a co-proprietor(s) holding the majority share in the land may apply for approval to partition the said land. According to the plaintiff's learned counsel, the effect of s. 141A would seem to be that where the necessary consent or

agreement, referred to in ss. 140 and 141 of the NLC is not forthcoming, then the majority shareholders can apply to the Land Administrator for partition, and the application would then seem to be dealt with as if consent of all co-proprietors had been obtained.

[14] In addition, the plaintiff's learned counsel submitted that where s. 145(1)(a) and (b) apply, application for partition can be made to the court. Paragraph (a) of s. 145(1) refers to court action *in lieu* of application under s. 140 of the NLC where there had been no united consent for a s. 140 of the NLC application.

[15] Learned counsel for the plaintiff brought to the attention of this court the case of *Ku Yan Ku Abdullah v. Ku Idris Ku Ahmad & Ors* [1991] 3 CLJ 2872; [1991] 3 CLJ (Rep) 73; [1991] 3 MLJ 439 where in that case an application for partition made to the Land Administrator was refused. The applicant in that case applied to the court under s. 145 and the application was granted on the basis that a majority shareholder is not precluded from relying on s. 145. The learned judge KC Vohrah J observed that the majority shareholder is not compelled to apply under s. 141A, nor is he barred from applying, as a primary application, under s. 145 of the NLC.

[16] According to the learned plaintiff's counsel, the plaintiff is not a majority shareholder as his shareholding constitutes 50% of the land while the defendants hold the remaining share. Even if the plaintiff was a majority shareholder, there is no reference in any part of Chapter 2 of Part 9 of the NLC, that in respect of a co-proprietor holding the majority share in a piece of land, he must first apply to the Land Administrator for partition before he applies to the High Court.

[17] The plaintiff's learned counsel further highlighted to this court the opinion of the learned author Judith Sihombing where it was stated:

> Reliance on the terms of section 141A (*albeit* only by the majority shareholders) or of section 145 is not mandatory. Section 141A provides that the majority shareholder "may" make the application. It would seem difficult to read this section as exclusive thereby providing the majority shareholder with only a right to action under this section, and excluding his right to approach the court. Equally it would seem difficult to read section 145 as restricting action thereunder to a minority shareholder, and further that the circumstances to be relied upon under paragraph (a) must be tested or established in an application to the Land Administrator. The absence of intent to "join in or consent" must be a question of fact. If either of these are present, the shareholder should be able to approach the court as a first step bearing in mind that the Land Administrator must refuse the application if these are absent.

[18] The learned author further wrote: A

> Matters to be considered by the court may be in addition to those considered by the Land Administrator who may be said to be more concerned with the operation of the Code, than with substantive law. Consequently in reliance of section 145 the court may well be able to expand its inquiry into the details of the shareholding itself, and other relevant matters. It is difficult to then see how the majority shareholder, or the minority shareholder who did not first apply to the Land Administrator, must be excluded from the court action. There does not seem to be any stated restriction on the power of the court under section 145, other than within the express reference to the provisions of civil procedure. Indeed the court may make whatever order it thinks just for the termination of the co-proprietorship. Thus with respect, it would seem that it would need express provision first to exclude an application from the majority shareholders from this section, and secondly to require the prerequisite of a failed application to the Land Administrator. B C

[19] Ultimately, the plaintiff contended that the learned judge in *S Subramaniam* (*supra*) fell into error in self restricting the High Court's jurisdiction to deal with the application under s. 145 of the NLC where there was no legitimate restriction in the first place. Nor has the *S Subramaniam*'s (*supra*) judgment provided any valid or acceptable grounds to differ from the *Ku Yan Ku Abdullah*'s judgment. Therefore, according to the plaintiff's learned counsel, the *S Subramaniam*'s judgment was erroneous and constitutes bad law. As the *Ku Yan Ku Abdullah*'s judgment accurately states the law on the subject matter, the High Court has the jurisdiction to hear the plaintiff's application under s. 145 of the NLC. D E

[20] The plaintiff further advanced to this court para. 3 of the Schedule to the Courts of Judicature Act 1964 on the additional powers of the High Court which was submitted to reinforce the plaintiff's submission. The said provision stipulates: F

> 3. Partition of land
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> Power to direct a sale instead of partition in any action for partition of land; and in any cause or matter relating to land, where it appears necessary or expedient, to order the land or any part thereof to be sold, and to give all necessary and consequential directions. G

Findings

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[21] First and foremost, this court found the plaintiff could not satisfy the provision of sub-s. (a) of s. 145(1) ie, that any of the co-proprietors will neither join in, nor consent to the making of an application for partition under Chapter 2 of the NLC. This court agreed with the submission of learned counsel for the first defendant that it would be against the spirit and purpose of the amended s. 141A of the NLC if any co-proprietors could I

simply issue a "five day notice" to the other co-proprietors and affirmed an affidavit barely ten days from the said notice with no disclosure of the plan for the partition to the other co-proprietors and made his way to the court making an application under s. 145 of the NLC. This court is of the considered view that there must be a procedure that a co-proprietor has to adhere to for application to partition land under Chapter 2 of the NLC and that procedure is laid down in s. 142 of the NLC.

[22] Section 142 of the NLC states:

142. Applications for approval.

(1) Any application for approval of the partition of any land shall be made in writing to the Land Administrator in Form 9B, and shall be accompanied by:

(a) such fee as may be prescribed;

(b) a plan of the land on a scale sufficient to satisfy the Land Administrator of all details of the partition, together with such number of copies thereof as may be prescribed or, in the absence of any such prescription, as the Land Administrator may require;

(c) if it is so prescribed or, in the absence of any such prescription, if the Land Administrator so requires, a copy of any approval or consent required under paragraph (c) of sub-section (1) of section 136 (as applied by section 141);

(d) all such written consents to the making of the application as are required under paragraph (e) of the said sub-section as so applied; and

(e) the written consent to the making of the application of any co-proprietor who has not joined therein, provided that in the case of an application made under section 141A, such consent be dispensed with.

(2) Upon receiving any application under sub-section (1), the Land Administrator endorse, or cause to be endorsed, a note thereof on the register document of title to the land to which it relates.

(3) In the case of an application made under section 141A the Land Administrator shall notify the other co-proprietors of the proposed partition, requiring them to submit in writing within a period of twenty-eight days from the date of service of the notice, any objection setting out fully the grounds on which the objection is based.

(4) Upon expiry of the period specified in sub-section (3), the Land Administrator:

(a) where there are objections, shall notify the applicant and the remaining co proprietors and hold an enquiry at the specified time and place, and:

(i) if satisfied that good grounds exist, shall reject the application or in the case of an application, relating to land the partition of which requires the approval of the State Director, shall, recommend that the application be rejected; or

(ii) in any other case, may approve the application or (as the case may be),recommend to the State Director that the application be approved; and

(b) where there are no objections, after due consideration, may approve the application or (as the case may be), recommend to the State Director that the application be approved.

(5) When the Land Administrator is satisfied that any application for partition of land is subject to:

(a) the category "agriculture" or to any condition requiring its use for an agricultural purpose; and

(b) the said land is two-fifths of a hectare or less than two-fifths of a hectare, he shall refer the application to be approved by the State Authority.

[23] This court further agrees with the contention of the first defendant that based on the OS filed by the plaintiff, it would seem that the only "pre-condition" for a co-proprietor to apply to court to partition a land is simply to engage a lawyer and issue a 'five day notice' to the co-proprietors to sign some undisclosed documents. This will create a dangerous precedent for there will be many unsuspecting landowners who may suddenly realise that their land has been partitioned into a certain shape, size and location without their prior knowledge or consent and have to pay for the costs and expenses for the said exercise as could be gleaned from the application made by the plaintiff before this court and if the said application is allowed. The courts will be bogged down with applications to partition land which were meant and best suited for the Land Administrator. The court agrees that it will not usurp the powers and responsibilities which the Legislature in its wisdom specifically entrusted to an agency.

[24] If matters before the Land Administrator could not be resolved, then the matter could be taken up to the court under s. 145(1)(a) of the NLC or as stated by His Lordship Mohd Hishamudin J in *S Subramaniam*, once an application to partition land is rejected, the applicant could appeal to the High Court against the decision of the State Director under s. 418 of the NLC.

[25] Further, unlike the plaintiff's application before this court where the requirement of such application to the Land Administrator was fully ignored, in *S Subramaniam*, the plaintiffs had informed the first defendant in writing of their intention to apply to the Land Administrator to have the land partitioned but the first defendant refused to give her consent to the proposal.

Further, the plaintiffs hold the majority shares while the defendants hold the minority shares. Likewise, in *Ku Yan Ku Abdullah*, there was also an application to the Land Administrator for the land to be partitioned but was rejected by the Director of Land and Mines who advised the plaintiff to apply to the High Court for an order for the partition of the land in question.

[26] The learned judge Mohd Hishamuddin J had explained why His Lordship disagreed with His Lordship KC Vohrah J in *Ku Yan Ku Abdullah*. His Lordship explained at pp. 750-753 (CLJ); pp. 371-372 (MLJ):

> The learned counsel for the plaintiffs contended that since the first defendant, as a co-proprietor, had refused to consent to the application to the land administrator for partition, therefore this court has the power to entertain the present application by virtue of s. 145(1)(a). With respect, I cannot agree to this contention. In my opinion, s. 145(1)(a) only refers to a situation where it is the holder (or holders) of the minority share who intends to apply to the land administrator pursuant to s. 142 but one of the co-proprietors has refused to consent to the proposal as required by s. 142(1)(e). In such a situation, the holder of the minority share may apply to the court under s. 145(1)(a).
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> To sum up, a co-proprietor (or co-proprietors) holding the majority share in a piece of land may only apply under s. 141A read with s. 142. Section 142, which is to be read with s. 145(1)(a), is meant only for a co-proprietor (or co-proprietors) holding the minority share in the land.
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> However, in *Ku Yan*, the court takes a different view. There the plaintiff who was the holder of the majority share in the land had applied to the land administrator to partition the land under s. 141A of the NLC. The other co-proprietors did not consent to the application. The application was rejected by the State Director of Land and Mines. The State Director did not give any reason for the rejection but advised the plaintiff to make the application before the High Court. The plaintiff thus applied to the High Court for partition purportedly under s. 145(1) of the NLC. The defendants - the co-proprietors - opposed the application on the grounds that the court has no jurisdiction to hear the application. The learned judge, KC Vohrah J, held that the court has the jurisdiction and allowed the application. His Lordship ruled (at p. 440):
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> > In my view, s. 141A does not compel a co-proprietor holding the majority share in a piece of land to apply to the land administrator for approval to partition the land; it is merely a permissive section, and if he elects to make such an application, s. 142(1) would apply to him bearing in mind para. (e) of s. 142(1) and bearing in mind that the land administrator would have to act in accordance with sub-ss. (3) and (4) of the section in dealing with such an application.
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> > In my view, too, a co-proprietor having the majority share in a piece of land thus is not barred from applying to the High Court under sub-s. (1) of s. 145 to have the co-proprietorship terminated and the land partitioned under sub-s. (2) of s. 145 on the general

ground that a co-proprietor will not join in nor consent to the making of an application for partition. There is no reference in any part of Chapter 2 of Part 9 of the Code, a chapter dealing with partition of lands, that in respect of a co-proprietor holding the majority share in a piece of land, he must first apply to the land administrator for partition under s. 145 before he applies to the High Court.

I therefore rule that I have jurisdiction to hear this application.

With the greatest respect, I disagree with the above view. Whilst it is true that s. 145(1) confers on the court the power to make an order for partition, at the same time, however, it is also important to observe that it is a limited power, that is to say, the power is confined only to the circumstances as specified in paras. (a) and (b) of sub-s. (1). In the present case, I shall confine only to para. (a) as the instant application is purportedly made under this paragraph. It is pertinent to note that under para. (a), the power of the court to make an order for partition only arises in a situation where 'any of the co-proprietors will not join in, nor consent to the making of, an application for partition'. This means that the co-proprietor who comes to the court invoking para. (a) of s. 145(1) must satisfy the court that the circumstances of his case satisfy the requirement of that paragraph. This means he has to satisfy the court that initially he intended to apply to the land administrator for partition under s. 142 but was faced with the situation where he could not get the co-operation of the other co-proprietors.

However, in a case where the co-proprietor who is desirous of having the land partitioned is the holder of the majority share, such a situation can never arise. This is because, as I have held, he cannot apply to the land administrator for partition under s. 142 as if he is the holder of the minority share and thus takes steps to bring in as co-applicants, or to obtain the consent of, all the other co-proprietors; and thereafter in the event one of the co-proprietors refused to join in or to consent, to apply to the court under s. 145(1)(a). As the holder of the majority share, he can only apply to the land administrator under s. 141A read with s. 142. When he applies under these provisions, he is not required to obtain the consent of the other co-proprietor(s), and I wish to reiterate that this exemption is made very clear by s. 142(1)(e). If he is so exempted, then the question of the consent of the other co-proprietor(s) does not arise. Now, if the question of consent of the other co-proprietor(s) does not arise in respect of the application of a co-proprietor who is the holder of the majority share, it follows therefore that para. (a) of s. 145(1) has no relevance to such co-proprietor.

If I may add further, it is also my respectful view that in *Ku Yan*, the plaintiff, after the rejection, should not have made an application to the High Court under s. 145(1)(a). Instead, he should have appealed to the High Court against the decision of the State Director under s. 418 of the NLC.

A In conclusion, I hold that a co-proprietor in a piece of land holding the majority share in the land, if he is desirous of having the land partitioned, he must apply to the land administrator pursuant to ss. 141A and 142 of the NLC. For the purpose of the application, the NLC does not require him to obtain the consent of the other co-proprietor(s). If the application is rejected by the land administrator or the State Director (as happened B in *Ku Yan*), he may come to the court to seek redress, but it can only be done by way of appeal to the High Court pursuant to s. 418 of the NLC. In no circumstances can he apply to the court by way of s. 145(1)(a) of the NLC.

[27] Based on the affidavit filed by the plaintiff before this court, he is only C the 1/2 share owner of the said land. This means plaintiff is not the holder of 'majority share'. Under the old law (before Act A1333), plaintiff is fully entitled to come before the court for relief to facilitate termination of co-proprietorship under s. 145(1)(a) due to lack of consent from other co-proprietor(s) as stated in *S Subramaniam*.

D **[28]** However, after the amendment to s. 141A, plaintiff need not own a "majority share" to apply to the Land Administrator for the said land to be partitioned. The question of whether a co-proprietor is a majority holder or a minority holder does not arise anymore with the amendment to s. 141A of the NLC. In fact, for the plaintiff to come straight to court and requesting E the court to invoke its power under s. 145(1)(a) of the NLC without even indicating their intention to apply to the Land Administrator to have the said land to be partitioned would make the preceding sections under Chapter 2 redundant. Section 142 of the NLC which lays down the condition for application for approval of the partition of any land would be nugatory. It F is the considered view of this court that the requirement to dispense with the consent of other co-proprietors under the new s. 141A read together with s. 142(3) and (4) of the NLC is still preserved in the NLC:

Section 142 Applications for approval

(1) …

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(2) …

(3) In the case of an application made under section 141A the Land Administrator shall notify the other co-proprietors of the proposed partition, requiring them to submit in writing within a period of twenty-eight days from the date of service of the notice, any H objection setting out fully the grounds on which the objection is based.

(4) Upon expiry of the period specified in sub-section (3), the Land Administrator:

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(a) where there are objections, shall notify the applicant and the remaining co proprietors and hold an enquiry at the specified time and place, and:

(i) if satisfied that good grounds exist, shall reject the application or in the case of an application, relating to land the partition of which requires the approval of the State Director, shall, recommend that the application be rejected; or

(ii) in any other case, may approve the application or (as the case may be), recommend to the State Director that the application be approved; and

(b) where there are no objections, after due consideration, may approve the application or (as the case may be), recommend to the State Director that the application be approved.

[29] In preserving the consent of the other co-proprietors, the Legislature had laid down the precondition and therefore that precondition must be first satisfied in accordance with the prescribed procedure under s. 142 of the NLC. Further if the Land Administrator is to reject the application for the partition of the land after an inquiry is held on the ground that good grounds exist from the objection raised by the other co-proprietors, the matters will be considered by the court in addition to those considered by the Land Administrator through the application made under s. 145 of the NLC as the court has the power to facilitate termination of co-proprietorship where the other co-proprietors will neither join in, nor consent to the making of, an application for partition under Chapter 2 of the NLC.

[30] In making the above finding, this court is not denying or excluding its jurisdiction to hear the matter as provided by s. 145 of the NLC. Nevertheless, as a general rule of construction of a statute, this court adopted the construction which will give effect to all the words and provisions which it contains. This court is mindful that the duty of the court is to give effect to the words in the provisions of the statute that produces the greatest harmony and the least inconsistency (*Australian Alliance Assurance Co Ltd v. Attorney General (Queensland)* [1916] QSR 135 at p. 161, per Cooper CJ). As stated in *Sangka Chuka & Ors v. Pentadbir Tanah Daerah Mersing Johor & Ors* [2014] 1 LNS 734:

> Parliament does not legislate in vain. Effect must therefore be given to the provision and not discarded willy nilly. I am inclined to think that the real reason why the applicants resorted to the judicial review process is to circumvent section 418 of the Land Code which only allows for an appeal to be lodged against the decision maker, in this case the Land Administrator.

[31] It is of the considered view of this court that the OS filed by the plaintiff did not disclose a reasonable cause of action. Even though the provision of s. 145 of the NLC gives the court the power to facilitate the making of such order desired by any co-proprietors to partition land,

notwithstanding whether they are holding the majority shares or otherwise (after the said amendment mentioned earlier), this court could not allow the plaintiff to rely on the said power of the court to circumvent the conditions and the power given to the Land Administrator in the preceding sections under the same chapter of the NLC. At the very least, and as stated by Mohd Hishamudin J in *S Subramaniam*, the plaintiff has to satisfy the court that he initially intended to apply to the Land Administrator to partition the land under s. 142 of the NLC but was forced with the situation where he could not get the cooperation of the other co-proprietors ie, the defendants.

[32] The steps taken by the plaintiff in the OS as stated in the above could not be condoned with, as the said steps or actions do not justify or disclose a reasonable action for this court to adjudicate upon.

[33] The first defendant's application in encl. 3 was therefore allowed with costs.